IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 18TH JANUARY 2007 / 28TH POUSHA 1928

WP(C).No. 14425 of 2006(P)

PETITIONER:

ELIZABATH MATHAI, W/O. MATHAI,
KADAMBELIL HOUSE, KEEZHILLAM, MAZHAVANNOOR
PANCHAYATH, KUNNATHUNADU TALUK.

BY ADV. SRI.N.ANILKUMAR

RESPONDENTS:

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1. THE SECRETARY, MAZHUVANNOOR GRAMA
PANCHAYATH, MAZHUVANOOR, KUNNATHUNADU TALUK.

2. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT.

3. CHARACHAN, CHARUPARAMBIL HOUSE,
KEEZHILLAM, MAZHUVANNOOR, KUNNATHUNADU TALUK.

R1 BY ADV. SRI.BABY KURIAKOSE
SRI.P.VIJAYAKUMAR
R2 BY GOVT.PLEADER SRI.K.J.MOHAMMED ANSAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.14425 OF 2006

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DATED THIS THE 18TH JANUARY, 2007

J U D G M E N T

Even though Sri.N.Anilkumar, learned counsel for the petitioner has addressed me on all the grounds raised in the Writ Petition, I propose to consider only the jurisdictional ground raised therein. The scheme for sanctioning cemeteries is provided in the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998. A perusal of Rules 4 and 6 of those Rules will show that even though it is for the Panchayat to receive applications for commencement of cemeteries or for licence in respect of existing cemeteries, the Panchayat does not have the power to reject those applications. The Panchayat is only to consider the application within 30 days of receipt of the application and forward the same with its recommendations (the same can be in the negative also) to the concerned District Collector. Going by the counter affidavit filed by the Panchayat, there was a dispute in this case regarding the very existence of the cemetery at the time of commencement of the Rules and on enquiry conducted by the Panchayat, it was seen that the cemetery in question did not exist at all. This was why the Panchayat decided to reject the application. Rule 4(2) of the Rules will show that even if a dispute arises regarding

the existence or otherwise of a cemetery at the time of commencement of the rules, such dispute has to be decided not by the Panchayat but by the District Collector. Thus, the jurisdictional question raised has to be answered in favour of the writ petitioner.

2. Accordingly Exts.P7 and P9 will stand quashed and there will be a direction to the Panchayat to forward Ext.P4 application together with all related papers to the District Collector concerned through the D.M.O. The District Collector will thereupon comply with the procedural formalities provided under the Rules and take a final decision on Ext.P4. Needful will be done by the Panchayat and the District Collector at their earliest.

The Writ Petition is disposed of as above.

(PIUS C. KURIAKOSE, JUDGE)

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